

# ARIZONA RACING COMMISSION

611<sup>TH</sup> REGULAR MEETING

WEDNESDAY, FEBRUARY 8, 2012

## MINUTES OF REGULAR MEETING

A public meeting of the Arizona Racing Commission was convened on Wednesday, February 8, 2012, beginning at 10:00 a.m. in the Building Conference Room, Suite 250, at 1110 West Washington Street, Phoenix, Arizona 85007.

<b>Present:</b>	<b>Chair</b>	<b>Erin Owens</b>
	<b>Vice-Chair</b>	<b>A. Melvin McDonald (arrived at 10:25 AM)</b>
	<b>Commissioner</b>	<b>Thomas E. Kelly</b>
	<b>Commissioner</b>	<b>Burton S. Kruglick</b>
	<b>Commissioner</b>	<b>Jay McClintock</b>

**Also Present:** William J. Walsh, Interim Director, Mary D. Williams, Assistant Attorney General, and Cassie Goodwin, Commission Secretary.

### A. Call to Order

**Chair Owens** called the 611<sup>th</sup> Regular Meeting of the Arizona Racing Commission to order at 10:06 a.m. The following matters were discussed, considered and decided at the meeting:

#### Approval of the Minutes:

1. Minutes of the 610<sup>th</sup> Regular Meeting held on Wednesday, January 11, 2012 – **Commissioner Kelly** moved to approve the minutes. **Commissioner McClintock** seconded the motion. Motion Carried. (Commissioner McDonald was not present for the vote).

### B. New Business

#### 1. Election of Racing Commission Officers

**Chair Owens** advised the Commission has traditionally held elections of officers at the February meeting and asked if anyone had any comments or questions on this issue. **Commissioner McClintock** asked if it was possible to postpone the election of new officers until the issues of the Director Search and racetrack legislation were resolved; possibly six months. **Assistant Attorney General Williams** advised that as long as the Department's statutes didn't specify a time for the elections, there would be no problem in a postponement. **Commissioner Kruglick** asked that they wait on discussing this item until Commissioner McDonald arrived. **Assistant Attorney General Williams** advised they could move this item to the end of their agenda. (**Commissioner McDonald** arrived at 10:25 a.m. and this matter continued with his participation.) Following a discussion of procedures followed in the past, **Commissioner McClintock** moved to postpone the election of officers until after a special meeting of the Commission in order to discuss the process. **Chair Owens** seconded the motion. **Assistant Attorney General Williams** clarified Commissioner McClintock's request to provide discussion on the process and then voting. The motion carried with a vote of 3 to 2 (Aye: Kelly, McClintock, and Owens; Nay: Kruglick and McDonald).

#### 2. Discussion on Status of Racinos in Arizona (Requested by Commissioner Kruglick)

**Interim Director Walsh** commented that Commissioner Kruglick asked for this item to be on the Agenda and neither the Governor nor the Department has a position on this issue. He then turned the discussion over to Commissioner Kruglick. **Commissioner Kruglick** asked Bill Rice if he had any comment on the issue. **Bill Rice** advised there is nothing happening with the racino bill; they are all working on it but there is no new update he can provide. **Commissioner Kruglick** asked if the Commission should put it back on the Agenda for next month for consideration and/or discussion at that time. **Mr. Rice** said he was not certain they would have anything new before the next meeting. **Commissioner Kelly** asked if there was a draft of the bill at this point in time. **Mr. Rice** stated not at this time. **Commissioner Kruglick** asked that this matter be tabled until a later date and no action was taken.

#### 3. Department Recommendation & Possible Commission Action on the following County Fair racing permit applications for a three year period (fiscal years 2012, 2013, and 2014)

##### a. Pinal County Fair – February 10, 11, 12 and 20, 2012

**Interim Director Walsh** informed the Commission that Pinal County Fairgrounds has submitted an application for renewal of their 3-year county fair racing permit for fiscal years 2012, 2013, and 2014. The application was complete, including approval from the Pinal County Board of Supervisors and a signed agreement with Turf Paradise. The Department has no objections to the dates and recommends approval.

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**Commissioner McClintock** moved to approve Pinal County Fairgrounds' Application for 2012, 2013, and 2014 Renewal Permits. **Chair Owens** seconded the motion. Motion Carried. (Commissioner McDonald was not present for the vote).

## 4. Yavapai County Fair Association's Racing Permit Renewal Application

### a. Status Update

### b. Review, discussion and possible action on Commission's options for proceeding with the renewal application.

**Chair Owens** turned this issue over to Assistant Attorney General Williams. **Assistant Attorney General Williams** informed the Commission that she contacted the Bankruptcy Trustee and was told they prefer to keep the license application on hold until the property is sold; they are optimistic and believe they have a buyer. Ms. Williams informed the Trustee that in the event the property was sold, the new buyer would need to submit a new application if they want to start racing again; they need to apply in their own right as the current application is not going to have any bearing on their ability to race and is not transferable. If the Commission wants to proceed and put this issue on the Agenda for next month, she can do that however, she would need to notify the Bankruptcy Court of the Commission's intentions to give everybody a chance to respond. The Trustee may want to fight it and she is unsure what the Bankruptcy Court will do about it, but it's an option before the Commission. The Commission can direct her to file the Notice and she will proceed that way. She would then come back to the Commission and advise if the Commission can rule on the application or it remains on hold; it will depend on what the Court allows the Commission to do with the application. **Commissioner McClintock** asked if it would make a difference since the application can't be transferred and the new owner would have to apply for their own permit anyway. **Assistant Attorney General Williams** advised no, but it is a pending application before the Commission and she thought that they would withdraw it, but that's not happened. This issue was put on the Agenda to allow her to give the Commission its options on how she should proceed. **Commissioner Kruglick** suggested the Commission wait until there has been a sale of the property and make a decision at that time. **Assistant Attorney General Williams** indicated that is an option, too. **Chair Owens** clarified that the application before the Commission has never been complete; anyone who purchases the property will have to file a new application from "ground zero" so there is no benefit to having that application pending. She believes the Commission should close the application.

**Chair Owens** moved to direct Assistant Attorney General Williams to proceed with the Notice to the Bankruptcy Court to allow the Commission to make a decision on the application. **Commissioner Kelly** seconded the motion. Motion carried. (Commissioner McDonald was not present for the vote).

## 5. New Director Search Process (A.R.S. § 5-101.01(C))

**Chair Owens** informed the Commission that on January 20, 2012, she received correspondence from the Governor advising that while she [the Governor] has not ruled out the three candidates the Commission has already sent to her, she has decided to exercise the statutory authority set forth in A.R.S. § 5-101-01(C) to request additional candidates for review. In order for the Commission to go into a more detailed discussion on this issue, the Commission will need to go into a special session. She suggested that the Commission hold a special meeting, outside this Commission meeting, to allow them to discuss their options and how to proceed. The posting has remained open since the initial posting in October 2011 and there have not been any new names submitted from the Arizona Department of Administration for consideration since the first vetting of the applicants and submittal of the list of candidates. **Chair Owens** moved to schedule a special meeting for the discussion of how to proceed and further action on this issue. **Commissioner Kelly** seconded the motion. Motion Carried.

## C. Information Reports

### 1. Department Monthly Update

a. **Status of Yavapai County Fair Association Racing Permit Renewal Application:** See information above.

### b. **Status Update on A.A.C. R19-2-205 (Regulatory Wagering Assessment of Pari-Mutuel Pools):**

**Interim Director Walsh** asked Matthew Gottheiner, Fiscal Analyst/Auditor, to provide the Commission with a brief update on this issue. **Mr. Gottheiner** reported that between the current funds on hand and the anticipated revenue through the end of the fiscal year, the Department will be able to cover its costs in fiscal

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year 2012 and have additional funds left over that can be carried forward to fiscal year 2013. As of July 1, 2012, the Department will no longer receive funding from the General Fund appropriation for its own expenses; all costs must be covered by the revenue that is coming in. The Department believes it will be able to cover those expenses with the current resources and additional resources that are anticipated to come in before the end of June. The Department does not require any change in its revenue sources at this time; no adjustments are necessary. **Interim Director Walsh** expressed the Department's gratification that things have been working out fairly well according to the Department's predictions. As Mr. Gottheiner indicated, there will be some large expenses due at the beginning of the fiscal year and this is why the law permitted the Department to carry over funds from one fiscal year to the next, to cover those particular issues, especially since it appears there won't be any racing except for simulcasting.

**c. Fatality involving Licensee at Turf Paradise on November 23, 2011: Interim Director Walsh** informed the Commission that when this issue was brought up at the January meeting the investigation was still open and neither the Commission nor the Department was at liberty to discuss the details. He then asked **Assistant Director for Enforcement Nolan Thompson** to update the Commission on this issue. **Assistant Director Thompson** informed the Commission that on November 23, 2011, Exercise Rider Daniel Filipe Harrison, died on the track at Turf Paradise while exercising his horse, Mr. Harrison fell from his horse; the outriders and other people on the track responded to him. The paramedics responded to him on the track and gave him basic necessary medical treatment; he was transported to John C. Lincoln Hospital where he was pronounced deceased related to the accident. The Department takes the safety of those individuals operating at the tracks and the general safety of the tracks very seriously. The Department is concerned about what happens during emergency events. There was an allegation that the paramedics failed to respond in an appropriate amount of time. The investigation determined this was not the case. There were also allegations that Turf Paradise was not following the procedures in the rules for the permittees. The investigation found that Turf was operating within the scope of their permittee's responsibilities to insure that there was adequate medical staff to respond to an emergency at the track. During the investigation the Department looked at all of these issues. Based on the investigation, interviews, the medical examiner's report, which lists the cause of death as "blunt force cervical spine trauma" and was an accident, the Department concludes that there were no violations. **Commissioner Kelly** asked what caused Mr. Harrison's fall. **Assistant Director Thompson** stated the Department doesn't know what caused the fall nor does it want to speculate on why. **Chair Owens** expressed her sympathy for the loss and of a concern with the inability of the paramedic's vehicle to start for transportation to the injured rider. What is being done to prevent this in the future? **Assistant Director Thompson** stated the Department discussed this issue with Turf Paradise. The morning of this incident the drivers were outside their vehicle at the time of the injury. The vehicle wouldn't start when they were called to the accident. The solution is that the drivers will remain in their vehicle whenever there are horses on the track, and start their vehicle at the beginning of each work day, making sure it is in proper working order. **Vincent Francia, General Manager of Turf Paradise**, addressed the Commission, informing of the procedures Turf has in place of emergencies. The drivers will remain in their vehicle whenever there is activity on the track, and they will ensure that their vehicle starts at the beginning of each day. **Interim Director Walsh** advised the Department went over safety procedures with Turf. There were rumors on the amount of time it took for the paramedics to arrive on the scene but the investigation dispelled those rumors. As to why he went down, there are any numbers of reasons; no one saw him go down and the Department cannot speculate on it.

**d. County Fair Status Report (Requested by Commission Kruglick): Interim Director Walsh** informed the Commission that, pursuant to Commissioner Kruglick's request, the Department contacted county fairs that conducted live racing in the last five years but did not conduct, or conducted limited live racing, in fiscal years 2010 and 2011, asked several questions. All fairs indicated that they cannot resume racing without some assistance, either from private sources or from the State. It is possible in the future that the budget may include funds for these races but at present there just isn't any money. **Commissioner Kruglick** asked that Casey Faunce provide a report. **Casey Faunce, Director of the Graham County Fair & Racing Association**, addressed the Commission advising there isn't much more he can add. They don't have money, the counties don't have money, and there isn't any funding anywhere. **Commissioner Kruglick** asked if the slot machines were allowed would that make a difference. **Mr. Faunce** said he believes it would.

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**e. Legislative Updates:**

1. **HB 2167 technical correction; racing commission prohibition**
2. **SCR 1006 technical correction racing commission prohibition**
3. **HB 2417 concessionaire loans; restrictions**
4. **HB 2450 concessionaire loans; restrictions**
5. **SB 1273 dog track live racing exception**

**Interim Director Walsh** advised there are a number of bills in the legislature having to deal with administrative issues. Most of the ones dealing with the Department are nonsubstantive. One important bill that has been introduced is SB 1273 which is regarding greyhound live racing exception. There are some provisions in the bill that would reduce the minimum number of days from four days per week for 50 weeks each calendar year to 100 days in a calendar year where live dog racing must be conducted by a commercial track in Pima County in order for that track to receive simulcast at its facility. Right now they have to run the four days a week for 50 weeks in order to be able to simulcast racing in and send it to their off track betting facilities. This would reduce that to just a total of 100 days in a year and would also provide the opportunity for live dog racing to be further reduced in Pima County if the permittee and the majority of licensed kennel owners agreed to a lesser number of days through written contract. It exempts the Pima County dog track from the one-on-one live to dark days simulcast at the dog track facility. The bill was passed through the Senate Natural Resources Committee on Monday, February 6<sup>th</sup>, and is now moving on to another committee.

**f. Remarks by Interim Director:** **Interim Director Walsh** informed the Commission he attended the opening of Rillito. Everything came together well; there were large crowds and everyone seemed to be having a good time. It's nice to see racing thrive in that type of an atmosphere where everyone's happy.

**2. Permittee Reports:**

**a. American Greyhound Racing: Dan Luciano** – An OTB location, Gallagher's in Chandler, Arizona, will be closing on February 11, 2012 due to a lack of business. It's only been open a few days a week and by consolidating, we believe it will help us out.

**b. County Fairs:** No Report given.

**c. Rillito: Patti Shirley, Vice President** – Rillito Park had a lovely opening weekend. There were only eight races on Saturday and handled \$97,000. There were only eight races on Sunday and they handled \$87,000. The difference between the two days is that, on Saturday, they had five quarter horse races and three thoroughbred races. On Sunday they had five thoroughbred races and three quarter horse races. So Rillito is the only track in the country where the quarter horses outhandled the thoroughbreds and they do it consistently. There were fewer people on Sunday probably due to the Pro Bowl, but they still had a nice big crowd, the weather was beautiful and everyone had fun. It was racing the way it was meant to be.

**d. Tucson Greyhound Park: Tom Taylor, General Manager** – Tucson Greyhound Park is running. He hoped the community saw the Super Bowl commercial that was shot at the park by Sketchers. They received a lot of publicity for the commercial. **Commissioner McClintock** asked if they planned to reduce the number of live days. **Mr. Taylor** said they do not; they wouldn't be able to make money if they did. They have to have options and this bill allows those options since they don't know what the future holds. They may consider dropping one day, Mondays are slow, and going to five from six, but that isn't planned at the moment. It would give them Sunday and Mondays off. **Chair Owens** asked if they were looking to reduce the number of races per day. **Mr. Taylor** said no.

**e. Turf Paradise: Vincent Francia, General Manager** – As of February 5<sup>th</sup> in-state horse racing is healthy. Turf's OTB is up four percent and total in-state handle is up two percent and they're pleased about that. Turf continues to have difficulty with the out-of-state handle, which is down about 20%. Again, he believes this is due to the Mid-Atlantic consortium refusing to take the increase built in to fund the Department. Mid-Atlantic says not to take it personally; they're not taking any increases from anyone. The lower out-of-state handle is not just due to Mid-Atlantic, Turf is also down from California, too, due to competition from other race tracks. Turf will have to take this season by season. In-state handle was healthy

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with attendance up four percent at the track and the OTB network. He believes this is primarily because of the commitment Turf has made to the social network media programs which are extremely effective. The purses continue to remain healthy. Last year, thru 94 days, Turf had given out \$6.5 million, this year its \$7.1 million. The average purse per race last year was \$7,800 this year its \$8,500. The average purse per day last year was \$70,000 this year its \$76,000. The Arizona bred races to run thru 94 days last year were 45, this year there are 58. Somewhat of a concern are the option starters in the race. Last year there were 6900 this season 6600. That's a swing of 300 horses. What Turf has found with the horse players, both in- and out-of-state, field size is absolutely everything in terms of how it affects the wagering in a positive way. It's a mixture, but at least in-state, which is the home market, they're doing well.

### 3. Optional Industry Stakeholder Association

a. **Arizona Greyhound Association** – No report given.

b. **Arizona Quarter Racing Association: Loretta Brasher, Executive Director** – Rillito had a great opening weekend. Since the track was closed for Super Bowl Sunday, the AQRA used the track clubhouse for their annual end of the year awards. It was very nice. Things are going great with the quarter horses. The public is betting on them and there are a lot of great races going forward for the rest of the meet at Rillito. Once they get finished there, they're looking forward to going back to Turf Paradise.

c. **Arizona Thoroughbred Breeders Association: Yvonne Kunz, Executive Director** – Last Saturday the Sun Country Quarter Horse Association asked if ATBA would come out to the show at West World and give a report as they were having a little get-together and wanted to have an "equine" talk. When she arrived there, she saw Senator Steve Pierce, Speaker of the House Andy Tobin, several other legislators, and staff from the Governor's office. She took that opportunity to speak with them regarding the breeder situation and lack of incentives in Arizona that New Mexico and California offers; the stallions that are being lost from Arizona; the mare program, and the farm programs that are leaving. She also took the opportunity to tell them about the County Fair racing, how that has left Arizona, and how it has devastated the breeders in a lot of areas. She also spoke with them about the racinos and what it has done for New Mexico and how it has helped them. They were a very receptive audience.

d. **Horsemen's Benevolent & Protective Association: Gary Miller, President** – He agrees with Ms. Kunz's comments on breeding and Mr. Francia on trying to get more Arizona horses as opposed to out of state. The HBPA is concerned about the increase going into the Department. The HBPA is working very closely with Turf to see what can be done and how to work to cut costs. HBPA is working and talking about alternative revenue sources.

e. **Jockey's Guild** – No report given.

### D. Commission Reports:

1. Nothing new to report.
2. **Future Agenda Items:** None requested.

The next regular Commission meeting will be held **Wednesday, March 14, 2012, at 10:00 a.m.** in Building Conference Room Suite 250, at 1110 West Washington Street, Phoenix, Arizona 85007.

E. **Call to the Public:** Steven Nolan addressed the Commission.

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## Adjournment:

**Chair Owens** called for a Motion to Adjourn. **Commissioner McDonald** moved to adjourn the meeting.

**Commissioner McClintock** seconded the motion. Motion Carried.

This public meeting adjourned at 11:40 a.m.

Dated this 14<sup>th</sup> day of March, 2012

Arizona Racing Commission

By   
Cassie Goodwin, Commission Secretary